IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7134 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANUBHAI M SHAH THRO PAH VINAYKANT R SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7134 of 1991

MR BN PATEL for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/10/2004

ORAL JUDGEMENT

In this petition the petitioner who is a retired

Professor of Sardar Patel University, has sought interest on the delayed payment of pension and other retiral benefits.

2. Few facts which are not in dispute can be noted at the outset. The petitioner retired from his service with effect from 1.3.1986, having reached the age of superannuation.

3. By Resolution dated 15.10.1984, the Government decided to introduce Pension Scheme for full time teaching staff of the Universities under the Education Department and in the affiliated and aided non-Government Arts, Science & Commerce Colleges imparting education in the State, with effect from 1.4.1982. Since the Resolution was passed on 15.10.1984 introducing the Pension Scheme with effect from 1.4.1982, certain provisions were made for the staff who were in service on 1.4.1982, but had retired prior to 15.10.1984. From the said circular it can be seen that an option was given to all the teaching staff who was in service on 1.4.1982, but had retired after 1.4.1982, to exercise the option within the specified period whether to continue in the existing Contributory Provident Fund Scheme or to switch over to the Pension Scheme.

4. It is not in dispute that the petitioner had opted for the pension scheme by his letter dated 12.9.1985 and was therefore, entitled to switch over to Pension Scheme. The said Circular dated 15.10.1984 also made certain provisions with respect to the refund of the employer's contribution to the Provident Fund in case of those optees who retired after 1.4.1982, but before 15.10.1984. With respect to those employees who opted for the pension scheme but retired after 15.10.1984, the employer was directly required to deposit with the Government, the accumulated Provident Fund of the employees.

5. It is the case of the petitioner that though he retired from service with pension entitlement on 1.3.1986, the Government delayed payment of the pension, gratuity and commuted value of pension by unreasonably long period. It is therefore the case of the petitioner that he should be awarded interest on the delayed payment of pension and other retiral benefits. The petitioner has stated in the petition that despite several representations the respondents did not take necessary steps to pay the pension and other dues.

6. What is not in dispute is that the petitioner was

paid the gratuity amount of Rs. 94,050/- on 7.12.1989. Again on the same day i.e. on 7.12.1989, the petitioner was also paid commuted value of pension of Rs. 1,03,933.50. The first instalment towards arrears of pension of Rs. 37,115/- was paid on 24.6.1988 and the remaining amount of arrears of pension of Rs. 62,746/- was paid to the petitioner on 19.12.1989.

7. The respondent No.2 has filed an affidavit-in-reply and stated inter-alia that there was no delay on the part of the Government in releasing the pension of the petitioner. It is suggested that there were certain queries in the pension case of the petitioner, which upon being satisfied by the University, the provisional pension was released and thereafter the final pension was also paid.

8. Besides this objection, the said respondent has also stated that the University had wrongly paid an amount of Rs. 33,005/- to the petitioner on 31.5.1986 towards gratuity and in view of the Resolution dated 15.10.1984 and more particularly, Clause 3(2) of the said Circular, contribution of the institution and gratuity amount was required to be deposited with the Government and therefore, the University erred in paying the said amount directly to the petitioner. It is further stated that though requested, the petitioner did not deposit the said amount of Rs. 33,005/- for a long time, but insisted that the amount should be adjusted towards his other entitlements. It is stated that the petitioner refunded the said amount only on 23.9.1988 and till the amount deposited by the petitioner was regularised, the decision for payment of retirement dues could not be taken. It is stated that however, by that time the petitioner was already being paid the provisional pension authorised on 5.5.1988.

9. With regard to the action of the University in mistakenly paying the gratuity amount to the petitioner, the Counsel for the petitioner has submitted that the stand of the Government is wholly erroneous. He has submitted that no part of the Government Resolution dated 15.10.1984 requires the University to deposit the gratuity of the petitioner with the State Government. He has submitted that from the very outset, the petitioner had been urging before the Government that there is no error in the University paying the said amount to him and eventually, out of frustration when his pension was not been finalised, he had also on 23rd September, 1988, deposited the entire amount with the Government.

10. Having heard the learned Advocate appearing for the parties, it appears that the Government unnecessarily delayed finalisation of the pension and other retiral benefits due and payable to the petitioner. The raising of objections and queries and the same being satisfied by the University cannot be blamed upon the petitioner. It was entirely between the State Government and the University to sort out the details about the pension entitlement of the petitioner. It is not the case of the respondents that the queries raised by the Government were such which could have been satisfied only by the petitioner. It was purely an inter-departmental correspondence between the Government and the University and the petitioner cannot be blamed for the same. Any delay caused on account of this would not disentitle the petitioner from receiving interest on delayed payments.

11. With respect to the stand of the Government that the petitioner was wrongly paid the amount of Rs. 33,050/- by the University towards gratuity and that the said amount was required to be deposited with the Government by the University, is also not born out from the Government Resolution dated 15.10.1984. I have gone through the entire Government Resolution in detail with special focus on Clause 3(2) of the said Government Resolution as suggested by the Government in its affidavit, but I am unable to locate any provision which requires the University to deposit with the Government the gratuity amount of the petitioner. The amount that the University required to deposit with the Government under the said Government Resolution was the employer's contribution towards Provident Fund, which admittedly the University had so deposited. No part of the Government Resolution dated 15.10.1984 provides that the University ought to have deposited the entire accumulated gratuity amount of the petitioner with the Government. The stand of the Government therefore, cannot be accepted. The petitioner had been urging before the Government that he has correctly received the amount in question and that his pension papers be finalised. The Government however, stood its ground and insisted that the petitioner should refund the said amount before any further steps are taken. In the facts of this case, I find that the Government ought not to have taken such a rigid stand since in any case the petitioner was entitled to receive further amounts of unpaid gratuity and arrears of pension and even if the University was required to deposit the amount in question with the Government, it was always open and permissible and in fact so suggested by the petitioner to adjust this amount towards his further entitlements. But to delay release of the pension and

other retiral benefits for over 3 years cannot be justified on any count. I therefore, find justification in the case of the petitioner to ask for interest on the delayed pensionary benefits.

12. Having said this, I do not find that the petitioner would be entitled to any interest towards the delayed payment of commuted value of pension since the petitioner is already being given interest on the delayed payment of arrears of pension and therefore saddling the Government with the liability to pay interest also on commuted value of pension, would be a double burden which cannot be justified.

13. In the result, I find that the petitioner would be entitled to receive interest on the delayed payment of arrears of pension and gratuity after 3 months of his retirement, till the actual payment of the amounts in question. It is true that currently the interest rates have come down drastically. However, in the present matter Court is concerned with the period of 1986 to 1989 when it is a matter of common knowledge, of which this Court can also take judicial notice, that the Bank interest rates were much higher than prevailing currently. I would therefore direct that the petitioner would be entitled to receive interest at the rate of 12% per annum for the entire period. In the result, it is directed that the respondents shall pay to the petitioner interest at the rate of 12% after 3 months of his date of retirement i.e. from 1.6.1986, till the date when payment of arrear of pension and gratuity were actually paid. It is clarified that the petitioner shall not be entitled to receive any interest on the delayed payment of commuted value of pension. With these directions, the petition stands disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

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